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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
DONALD REYES,  
  
Defendant and Appellant.

2d Crim. No. B267708  
(Super. Ct. No. 2012017959  
(Ventura County))

Donald Reyes appeals an order revoking his Post Release Community Supervision (PRCS; Pen. Code, § 3450 et seq.)<sup>1</sup> and committing him to 174 days county jail. (§ 3455, subd. (d).) Appellant contends that his due process rights were violated because he was not provided a *Morrissey*-compliant probable cause hearing (*Morrissey v. Brewer* (1972) 408 U.S. 471 [33 L.Ed.2d 484] (*Morrissey*)). We affirm.

*Facts and Procedural History*

On January 2, 2013, appellant pled guilty to evading an officer with willful disregard (Veh. Code, § 2800.2, subd. (a)) and admitted a prior strike conviction (§§ 667, subds. (c)(1) & (e)(1); 1170.12, subds. (a)(1) & (c)(1)) and two prior prison term enhancements (§ 667.5, subd. (b)). The trial court struck the prior strike conviction and one prior prison enhancement, and sentenced appellant to three years state prison. Appellant was released from prison and placed on PRCS on November 9, 2013.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

In 2014 and early 2015 appellant served two PRCS flash incarcerations and three PRCS revocations for failure to obey all laws, failure to report to probation, failure to drug test, changing residences without notifying probation, and possession of drug paraphernalia. On August 4, 2015, appellant was arrested for failing to report to probation, evading an officer while driving recklessly, resisting an officer, and loitering.

On August 6, 2015, Senior Deputy Probation Officer Michelle Larson advised appellant of the alleged PRCS violations, conducted a probable cause hearing, and determined there was probable cause that appellant had violated his PRCS terms. (§ 3455, subd. (a).) Appellant was advised of his right to counsel and right to a formal revocation hearing, and advised that Ventura County Probation Agency recommended 180 days county jail. Appellant refused the waiver offer and requested a formal revocation hearing.

On August 12, 2015, Ventura County Probation Agency filed a PRCS revocation petition. (§ 3455, subd. (a).) Appellant appeared with counsel and made a *Williams* motion (*Williams v. Superior Court* (2014) 230 Cal.App.4th 636) to dismiss the petition on due process grounds. After the trial court denied the motion, appellant submitted on the petition and the trial court found appellant in violation of PRCS. Appellant was ordered to serve 174 days county jail with 34 days credit.

#### *Discussion*

Appellant argues that his procedural due process rights were violated because he did not receive a *Morrissey*-compliant probable cause hearing. The PRCS revocation procedures here utilized are consistent with constitutional, statutory, and decisional law. These procedures do not violate concepts of equal protection or due process of law. We so held in *People v. Gutierrez* (2016) 245 Cal.App.4th 393 and *People v. Byron* (2016) 246 Cal.App.4th 1009. We follow our own precedent. The trial court did not err in denying the motion to dismiss.

Appellant contends that his due process rights were violated because the probable cause hearing resembled a pro forma, ex-parte hearing to solicit a waiver of

PRCS rights and was not conducted by a neutral hearing officer.<sup>2</sup> The record reflects that the hearing officer (Larson) was not appellant's supervising probation officer or the one who reported the PRCS violation or recommended revocation. (See *Morrissey, supra*, 408 U.S. at p. 485 [33 L.Ed.2d at p. 497] [probable cause determination should be made by someone "not directly involved in the case"]; *Williams, supra*, 230 Cal.App.4th at p. 647 [same].) Larson advised appellant of his right to counsel and right to a formal PRCS revocation hearing which appellant invoked. Appellant makes no showing that he was denied a fair hearing.

Appellant contends that the PRCS revocation procedure violates Proposition 9 (entitled "Victims' Bill of Rights Act of 2008: Marsy's Law") which created section 3044 and provides that a parolee is entitled to a probable cause hearing no later than 15 days following his or her arrest for violating parole and a revocation hearing no later than 45 days following his or her arrest. (See *Williams v. Superior Court, supra*, 230 Cal.App.4th at pp. 649-650.) In *People v. Byron, supra*, 246 Cal.App.4th at pp. 1017-1018, we held that PRCS is different from parole. Section 3044 does not apply to the PRCS revocations which are governed by section 3455. Appellant's argument that section 3455, as enacted as part of the 2011 Realignment Act, illegally "bypasses" Proposition 9 without a super majority vote of the Legislature is, therefore, without merit.

The denial of a *Morrissey*-compliant probable cause hearing does not warrant reversal unless it results in prejudice at the revocation hearing. (*In re La Croix* (1974) 12 Cal.3d 146, 154-155.) Appellant makes no showing that any due process defect prejudiced him or affected the outcome of the PRCS revocation hearing. (*In re Winn* (1975) 13 Cal.3d 694, 698 [defendant has burden of showing prejudice]; *In re*

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<sup>2</sup> Appellant claims that he did not have adequate time to prepare for the probable cause hearing. When the motion to dismiss was argued, appellant presented no evidence about what occurred at the probable cause hearing. Having failed to make an adequate record for review, appellant is precluded from speculating on matters outside the record. (*People v. Foss* (2007) 155 Cal.App.4th 113, 126-127 [offer of proof required to preserve issue on appeal].)

*Moore* (1975) 45 Cal.App.3d 285, 294; *People v. Woodall* (2013) 216 Cal.App.4th 1221, 1238 [same].) Appellant submitted on the PRCS revocation petition and served the custodial sanction (174 days county jail). (See, e.g., *People v. Gutierrez*, *supra*, 245 Cal.App.4th at p. 399 [defendant submitted on PRCS revocation petition without contesting probable cause determination].) “[T]here is nothing for us to remedy, even if we were disposed to do so.” (*Spencer v. Kemna* (1998) 523 U.S. 1, 18 [140 L.Ed.2d 43, 56].)

*Disposition*

The judgment (order revoking PRCS) is affirmed.

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YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Donald Coleman, Judge  
Superior Court County of Ventura

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Wayne C. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, Allison H. Chung, Deputy Attorney General, for Plaintiff and Respondent.